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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,786	11/10/2005	Martin Richardson	03164.0184USWO	3626

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/534,786	Applicant(s) RICHARDSON, MARTIN	
	Examiner Kim M. Lewis	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 8-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/13/05</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> . |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 5/13/05 has been received and made of record. Note the acknowledged form PTO-1449 enclosed herewith.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As regards claim 17, "each tab" and "the openings" lack proper antecedent basis. It appears as if claim 17 should depend from claim 16, which provides antecedent basis for the claimed terminology in claim 17.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-4, 6, 7 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,580,555 ("Coppess").

As regards claim 1, Coppess discloses a portable pelvic and leg splint that anticipates applicant's presently claimed invention. More specifically, Coppess discloses a device for bracing the pelvic region of a patient. The device includes a plurality of straps (39) for wrapping around the pelvic region of a patient. As can be seen in Fig. 1, the straps are arranged in a side-by-side relationship and interconnected to each adjacent strap via pad (1) at one or more points to restrict relative movement of the straps at the or each point of interconnection, wherein when positioned on the patient, one of the straps may be an upper strap covering the upper pelvic region and adjoining lower abdominal region of a patient and the other strap or one of the other straps may be a lower strap covering the lower pelvic region and adjoining crutch region of the patient. Coppess also discloses fastening means (45, 47) for holding the straps wrapped around the pelvic region of the patient, whereby in use, the fastening means of the upper strap can be released to provide access to the lower abdominal region, or the fastening means of the lower strap can be released to provide access to the crutch region of the patient.

As regards claim 2, Coppess discloses the device according to claim 1, wherein the device includes 4 to 8 straps of which 2 to 4 straps may be required to brace the patient's pelvis (note Fig. 1).

As regards claim 3, Coppess disclose the device according to claim 2, wherein when 3 or 4 straps are required to brace the patient's pelvis, the straps interposed

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between the upper and lower straps can remain in position on the patient while the upper and/or lower strap is released to facilitate surgical procedures (note Fig. 4).

As regards claim 4, Coppess discloses the device according to claim 1, wherein each strap is at least 4cm wide (note the disclosure of 1 or 1 ½ inch straps at col. 3, lines 2-3).

As regards claim 6, Coppess discloses the device according to claim 1, wherein the straps are interconnected by a resiliently flexible member and that the straps extend from the member in parallel relationship (note Fig. 3. which shows pad 1 rolled up, thereby being flexible).

As regards claim 7, discloses the device according to claim 6, wherein the resiliently flexible member interconnect the straps at a point along their length that, in use, can be wrapped around the pelvic region of a patient (note Fig. 4).

As regards claim 14, Coppess discloses the device according to claim 1, wherein the fastening means enables the length of each strap wrapped around the patient to be adjusted, thereby allowing the device to be fitted to patients of varying sizes and allowing pressure applied by each strap to the patient to be adjusted (note col. 3, lines 6-9, which discloses length adjustment).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 5 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coppess.

As regards claim 5, Coppess fails to teach the device according to claim 1, wherein each strap is between 9 and 12cm wide. However, it has been held that a change in size of a prior art device is a design consideration within the level of ordinary skill in the art. Thus, it would have been obvious to one having ordinary skill to modify the size (*i.e.*, increase the width) of straps of the device of Coppess in order to fit the intended user.

As regards claims 15-17, Coppess fails to disclose the device according to claim 1, wherein on each strap the fastening means includes a first attachment means and a plurality of co-operating second attachment means spaced along the length of the strap which can be coupled together so that each strap can form a loop of varying sizes, the device according to claim 14, wherein the first attachment means is in the form of a flexible tab and that the second attachment means is in the form of one or more openings through which the tab can be threaded and fastened, and the device

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according to claim 15, wherein each tab includes sections of hook and loop fasteners and that the openings are rings projecting from the straps, whereby in use, the tab can be threaded through a ring and folded on itself so that the hook and loop fasteners engage.

Instead, Coppass discloses straps with adjustable male and female attachment components. These attachment components are capable of being moved along the length of the strap in order to adjust the loop formed by the strap in order to form a loop of varying sizes. Since, the fastening means are equivalent because they perform the same function, it would have been obvious to one having ordinary skill in the art to substitute any equivalent fastening means such as hook and loop material, that performs the function of securing the straps about a user and adjusts the loop size. Furthermore, the limitations of claim 16 and 17 would also have been obvious to one having ordinary skill in the art since they follow from use of hook and loop attachments.

Allowable Subject Matter

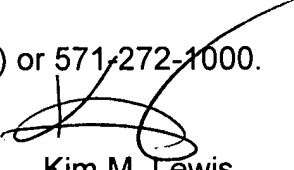
9. Claims 8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Friday, from 8:30 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kim M. Lewis
Primary Examiner
Art Unit 3772

kml
February 18, 2007